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DEPARTMENT OF JUSTICE



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Christopher Schiano
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Via E-mail

RE: Your Recent Public Records Act Request (DOJ PRA No. 2018-02422)

Dear Mr. Schiano:

This letter is in response to your recent correspondence, which was received by the California Department of Justice (DOJ) on December 7, 2018, in which you sought records pursuant to the Public Records Act (PRA) as set forth in Government Code section 6250 et seq.

Specifically, you requested the following records: "Any email sent or received by any employee of your agency between November 24, 2018 and November 27, 2018 which includes the keywords 'tear gas' and/or 'teargas'."

On December 17, 2018, we sent you a letter extending our time to respond to this request.

On December 26, 2018 we sent you a letter stating our intent to produce responsive, non-exempt records to you on a rolling basis. The first group of such documents was attached to the e-mail transmitting this letter.

Our search for and review of records that may be responsive to your request is ongoing. Please be advised that there may be responsive records that are exempt from disclosure in whole or in part under the deliberative process exemption, the investigative records exemption, the attorney work-product privilege exemption, and/or the attorney-client privilege exemption.

Investigative Records Exemption: Government Code section 6254, subdivision (f) exempts from disclosure investigatory and security files of the Attorney General and the Department of Justice, the Office of Emergency Services, and any state or local police agency. (See *Dick Williams v. Superior Court* (1993) 5 Cal.4th 337, 354.) Investigative records do not lose their exempt status due to a failure to prosecute, or the close of an investigation. (*Id.* at p. 355 [While there may be reasons of policy that would support a time limitation on the exemption for investigatory files, such a limitation is virtually impossible to reconcile with the language and history of subdivision (f).])

Attorney Work-Product and Attorney-Client Privilege Exemption: Confidentiality privileges set forth elsewhere in law, including the attorney-client privilege contained in Evidence Code section 954 (which protects confidential communications between the attorney and the client) and the attorney work-product privilege contained in Code of Civil Procedure section 2018.030 (which protects any writing reflecting an attorney's impressions, conclusions, opinions, legal research, or legal theories that is maintained as confidential) are incorporated into the Public Records Act. (Gov. Code, § 6254, subd. (k); *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363; *County of Los Angeles v. Superior Court* (2000) 82 Cal.App.4th 819, 833.)

The attorneys in our department provide legal advice to the Attorney General and his designees and prepare confidential analyses as part of their work. Accordingly, communications between the Attorney General or his designees and the department's attorneys, and analyses prepared by those attorneys are privileged materials exempt from disclosure under the Public Records Act.

Deliberative Process Exemption: The deliberative process privilege exempts from disclosure materials that would expose an agency's decision making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions. Even if the content of a document is purely factual, it is nonetheless exempt from public scrutiny if it is actually related to the process by which policies are formulated or, if it is inextricably intertwined with policymaking processes. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.) Records that reveal deliberative processes are exempt under Government Code section 6255 when the public interest in disclosure is outweighed by the public interest in non-disclosure. (*Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 306.)

Because it will take some time to review records that may be responsive to your request for such exemptions, we plan to produce responsive, non-exempt records to you on a rolling basis. The second group of documents is attached to the e-mail transmitting this letter. We anticipate providing you with an additional update and production of documents in March 2019.

Sincerely,



JENNIFER LEE
Deputy Attorney General
Government Law Section

For XAVIER BECERRA
Attorney General

JAL:
cc: Public Records Coordinator